

rule making based on their satisfactory safety experience under the exemption they now hold may well be a more satisfactory way for the Air Force to proceed. Other elements of DOD may also find a well-reasoned petition for rule making preferable to repeated applications for exemptions. It should also be recognized that transportation of hazardous materials aboard DOD's own vessels, vehicles and aircraft does not require either rule making or exemptions since such operations are not considered to be in commerce.

After considering the various points advanced by the commentors on the criteria for determining whether an emergency exists, the Bureau finds itself in concurrence with the commentor who took the position that:

The regulations implementing the exemption power should \* \* \* refrain from specific definition of an "emergency", for the very nature of emergencies is their unforeseen timing and character. The need for expedited treatment as an emergency matter is best left to the judgment and discretion of the Materials Transportation Bureau and its staff, to determine on a case-by-case basis as each situation arises. Attempts at definition of an indefinable concept will only serve to frustrate the equitable exercise of this power, by boxing it into criteria that fail to accommodate every situation that will be encountered.

#### APPEALS

Several comments noted the lack of a specific appeal procedure for those applicants whose applications may be denied. One of the commentors went on to suggest that perhaps the reconsideration procedures in Part 102 pertaining to rule making should be available for appealing exemption denials. The other commentors recommended the addition of specific appeal procedures to this body of exemption regulations. The Bureau believes this latter approach to be preferable and therefore has added a new § 107.121 expressly providing for the appeal of various actions taken under these exemption regulations to the Director of the Materials Transportation Bureau whose decisions will be administratively final.

#### CONFIDENTIAL INFORMATION

A few commentors criticized the proposed regulations for not being specific as to the disposition of documents for which requested confidential treatment is denied by the Bureau. Several of those commentors expressed the view that an applicant faced with an adverse determination on his request for confidentiality should have the option of withdrawing his application. The Bureau agrees with both of these views. Therefore, it has established more comprehensive procedures governing requests for confidential treatment. These procedures in new § 107.3 will apply to all documents submitted with respect to hazardous materials, not just applications for exemptions. They provide for notice to an applicant when his request for confidentiality is denied and an opportunity for him to respond or withdraw his application before the Bureau

discloses the information. Section 107.117 concerning withdrawal of a pending application has been modified to expressly allow an applicant to recover the contested documents if he withdraws his application before it is finally determined. These changes do not go so far as to allow the return of such documents after an application has been finally denied as was suggested by one commentor. The Bureau is not prepared to authorize withdrawal of documents once they have served as a basis for a completed official action on an application for exemption, be it an approval or a denial.

Also, in response to comments, the Bureau has modified § 107.123(b), pertaining to what the Bureau makes available for public inspection, by deleting the misleading reference to materials "not relevant to the petition" and by adding a citation to the Department of Transportation's Freedom of Information Act regulations.

#### PARTIES TO EXEMPTIONS

A large number of comments made the point that a procedure should be established for extending the terms of an exemption granted to one person to other persons in like circumstances without requiring a complete duplication of the various steps and evaluations performed with regard to the original application. The arguments in support of this view are in many respects similar to those which justified simplification of the renewal process.

The procedures suggested by the commentors were for the most part analogous to the "registration" concept that has been employed for the past few years by the Hazardous Materials Regulations Board under its special permit program. Under that program, once the efficacy of a proposal susceptible of being performed by persons in addition to the applicant was established and a special permit (i.e., exemption) issued, the Board would allow other persons to "register" (i.e., become a co-holder) under that special permit.

The Bureau agrees that provision should be made for a similar process under these new exemption procedures. However, rather than merely codifying the earlier procedures, the Bureau has decided to incorporate certain modifications to bring them in line with the intent and purpose of the Hazardous Materials Transportation Act and in particular § 107 thereof. Since § 106 of the Act uses the term "registration" to describe an entirely different concept, the term "party to an exemption" has been adopted. New § 107.111 sets forth the requirements for applying for status as a party to an exemption and describes the Bureau's processing thereof. By filing an application to become a party to an exemption, the applicant constructively adopts as his own the technical and safety information submitted by the applicant for the exemption and if he is granted status as a party to the exemption he is bound by the limitations and conditions that apply to the initial holder of the exemption and

will be identified separately as a holder on the exemption documents issued to him.

#### NATIONAL TRANSPORTATION SAFETY BOARD COMMENTS

On September 12, 1975, the closing day for comments on the proposed exemption regulations, the Chairman of the National Transportation Safety Board (NTSB) filed as comments to the docket an advance copy of two formal NTSB recommendations subsequently delivered to the Secretary of Transportation on September 25, 1975.

Both of the NTSB's recommendations stem from its conclusion that "the proposed exemption procedures do not fulfill the intent of Section 107 of the Hazardous Materials Transportation Act, which calls for 'a safety analysis as prescribed by the Secretary to justify the grant of such exemption.'" The NTSB does not believe that the information required by proposed § 107.5(b) (4)-(7) and (9) [§ 107.103(b) (4)-(7) and (9) in these final regulations] will result in a clear presentation of specific safety concerns and does not constitute a safety analysis. In its view each applicant should be required to "prepare a formal safety analysis statement which would—

"(1) Identify the ways persons could be injured with respect to the quantity and form of the materials to be transported,

"(2) Identify the specific risks for which the applicant considers it necessary to establish safety control measures, based on § 107(9) (i) and (ii) of the proposed exemption procedures [§ 107.103(b) (9) (i) and (ii) of these final regulations], and

"(3) Describe measures which would eliminate these risks." In addition to assuring that such formal statements would cause applicants to focus on safety problems, the NTSB believes that the mass of data that would be derived could be used as base data in future risk analyses.

Having expressed these views, the NTSB proceeded to recommend to the Secretary of Transportation that he

"(1) Prescribe the content and form for a safety analysis statement to accompany applications for exemptions to the Materials Transportation Bureau's regulations. (Recommendation HM-75-1) (Class I).

"(2) Revise proposed 49 CFR 107.5(b) (9) to require submission of a safety analysis statement, in the form prescribed by the Secretary of Transportation, to support the applicant's belief that his proposed exemption will achieve the level of safety specified in 49 CFR 107.5 (b) (9) (i) and (ii). (Recommendation HM-75-2) (Class I)."

The provisions of the Bureau's proposed procedures cited by the NTSB require an applicant to prepare (1) a detailed technical description of his proposal, (2) a quantitative and qualitative chemical analysis of the material concerned, (3) an analysis of all related shipping experience and accident experience, (4) a statement of the special transportation controls needed for the